

R.D. # 0006-00  
Secaucus, NJ

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

**GOYA FOODS, INC.<sup>1</sup>**

Employer

and

**CASE 22-RC-11895**

**LOCAL 971, INTERNATIONAL  
SHIELD OF LABOR ALLIANCES (ISLA)**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Briefs filed by the parties have been fully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organizations involved claim to represent certain employees of the Employer.<sup>4</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.<sup>5</sup>
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>6</sup>

**All warehousemen, helpers, mechanics and hi-lo operators employed by the Employer at its Secaucus, New Jersey facility, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.**<sup>7</sup>

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<sup>3</sup> The Employer is a Delaware corporation engaged in the wholesale distribution of food products at its Secaucus, New Jersey facility, its only facility involved herein.

<sup>4</sup> United Food & Commercial Workers Union, Local 56, AFL-CIO, herein the Intervenor, was permitted to intervene based on its collective bargaining relationship with the Employer covering the employees sought in this petition. The parties stipulated and, I find, that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act. The status of the Petitioner as a labor organization within the meaning of the Act will be discussed *infra*.

<sup>5</sup> No party has asserted that there is a contract bar or other bar to an election in this matter.

<sup>6</sup> The unit description is in accord with the recognized unit which I find to be appropriate for purposes of collective bargaining. *Newhouse Broadcasting Corp. d/b/a WAPI-TV-AM-FM*, 198 NLRB 342 (1972); *Campbell Soup Company*, 111 NLRB 234 (1955). There are approximately 120 employees in the unit.

<sup>7</sup> The parties agree that certain employees that perform some driving functions are classified as warehousemen and are included in the unit.

The Employer and the Intervenor declined to stipulate that the Petitioner is a labor organization under the Act. The record reveals and it is undisputed that the Petitioner was formed for the purpose of dealing with employers concerning wages, rates of pay, hours and working conditions on behalf of employees it seeks to represent. As of the date of the hearing in this matter, the Petitioner had no collective bargaining agreements with any employers. The record reveals that the Petitioner intends to allow employees to participate in its future affairs by allowing employees to elect officers. The Petitioner was formed on or about February 1, 2000. I have taken administrative notice that the showing of interest submitted by the Petitioner in support of the instant petition authorizes the Petitioner to represent employees and negotiate on their behalf.

With regard to labor organization status, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). I find that the Petitioner has satisfied the definitional requirements. In this connection, noting that the Petitioner has submitted a requisite showing of interest where employees have designated it to represent them in collective bargaining, that based thereon it has filed the instant petition and that it intends to bargain on behalf of employees in the event it becomes their representative, I find that the Petitioner is an organization in which employees participate within the meaning of Section 2(5) of the Act. *Grand Lodge International Association of Machinists*, 159 NLRB 137 (1966); *Pittsburgh Limestone*

*Corporation*, 77 NLRB 710 (1948). Further, there is no evidence that the Petitioner is either directly or indirectly affiliated with any other labor organization. Cf. *Stewart-Warner Corp.*, 273 NLRB 1736 (1985).

Based upon the above, and the record as a whole, I find the Petitioner to be a labor organization under Section 2(5) of the Act. *Ana Colon, Inc.* 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, *supra*.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found to be appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 971, International Shield of Labor**

**Alliances (ISLA); United Food & Commercial Workers Union, Local 56, AFL-CIO; or Neither.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102, on or before April 27, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by May 4, 2000.

Signed at Newark, New Jersey this 20<sup>th</sup> day of April 2000.

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Gary T. Kendellen, Regional Director  
NLRB Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

177-3925-2000